UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

HBC MANAGEMENT SERVICES, INC.,[1]

Employer,

and Case 05-RC-266799

INTERNATIONAL UNION, SECURITY, POLICE AND FIRE PROFESSIONALS OF AMERICA (SPFPA),

Petitioner,

and

LAW ENFORCEMENT OFFICERS SECURITY UNIONS (LEOSU-DC) A DIVISION OF THE LAW ENFORCEMENT OFFICERS SECURITY UNIONS (LEOSU) AFFILIATED WITH THE LAW ENFORCEMENT OFFICERS SECURITY & POLICE BENEVOLENT ASSOCIATION (LEOS-PBA),

Intervenor.

DECISION AND ORDER

International Union, Security, Police and Fire Professionals of America (SPFPA) ("Petitioner") filed the petition herein with the National Labor Relations Board ("Board") under Section 9(c) of the National Labor Relations Act, as amended ("Act"), seeking to represent a group of employees employed by HBC Management Services, Inc. ("Employer"). The Employer is engaged in the business of providing security-guard services to the United States Government.

A hearing was held via videoconference on October 21, 2020 before a hearing officer of the Board.[2] As the parties stipulated, I find that the agreed-upon Unit set forth below is appropriate for the purposes of collective bargaining:

---

[1] The Employer's name appears as amended by stipulation of the parties.

[2] Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated the undersigned its authority in this proceeding. Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings, made at the hearing, are free from prejudicial error and are hereby affirmed.
2. The parties stipulated, and I find, that the Employer is a corporation with an office and place of business in Alexandria, Virginia, and is engaged in the business of providing security-guard services to the United States Government including the Department of Homeland Security at its facility located in Arlington, Virginia. In conducting its operations during the 12-month period ending September 30, 2020, the

> ***Included:*** All full-time and part-time armed and unarmed security officers employed by the Employer at the US-Visit office located at 1616 North Fort Myer Drive, Arlington, Virginia.
>
> ***Excluded:*** All office clerical employees, professional employees and supervisors as defined by the Act.

Furthermore, there is no dispute, and I find, that the employees in the petitioned-for unit are guards under Section 9(b)(3) of the Act. Additionally, I find, as stipulated by the parties, that the Petitioner and the Law Enforcement Officers Security Unions (LEOSU-DC) a division of the Law Enforcement Officers Security Unions (LEOSU) affiliated with the Law Enforcement Officers Security & Police Benevolent Association (LEOS-PBA) ("Intervenor") are each qualified to represent the unit described in the petition and herein within the meaning of Section 9(b)(3) of the Act.

The sole issue in this proceeding is whether the instant petition is barred by a collective-bargaining agreement ("Agreement") executed by the Employer and the Intervenor that covers the petitioned-for employees. The Intervenor contends that the Agreement is effective and currently in-force, and thus bars the instant petition. In contrast, Petitioner argues that the Agreement is not a bar to the petition.[3] The parties were permitted to file post-hearing briefs, to which Petitioner and the Intervenor availed themselves, and I have carefully considered their respective positions.

For the reasons set forth below, and in accordance with extent legal authority, I find that the Employer and the Intervenor are parties to the Agreement, the Agreement is valid and continues in-force, and consequently serves to bar the processing of this petition. Accordingly, I will dismiss the petition.

I. FACTUAL OVERVIEW

The Employer employs approximately 7 employees in the petitioned-for unit, all of which work at the US-Visit office in Arlington, Virginia. On March 16, 2016, the Intervenor was certified by the Board in Case 05-RC-168988 as the exclusive collective-bargaining

---

Employer provided services valued in excess of $50,000 in states other than the Commonwealth of Virginia.

3. I further find, as also stipulated by the parties, that the Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
4. The parties additionally stipulated, and I find, that the Petitioner and the Intervenor are labor organizations within the meaning of the Act.
5. Petitioner is seeking to represent the employees in the unit described in the petition and herein, but the Employer declines to recognize Petitioner as the collective-bargaining representative of those employees.
6. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

[3] The Employer does not take a position on whether the Agreement bars the instant petition.

representative of all full-time and regular part-time security guards employed by the Employer at the US-Visit office.[4] Thereafter, on October 18, 2016, the Employer and the Intervenor entered into the Agreement, and according to Article 31of the Agreement, it was initially effective from November 1, 2016 through October 31, 2019. Based on record evidence, the contract was ratified by bargaining unit employees as of at least October 17, 2016.

Relevant portions of the Agreement germane to the sole issue involved herein are as follows:

> **ARTICLE 2: RECOGNITION**
>
> **Section 1.** The Employer recognizes the Law Enforcement Officers Security Unions (LEOSU-DC), a division of LEOSU, LEOS-PBA, as the exclusive representative of all full-time and regular part-time officers for the purposes of collective bargaining in respect to rates of pay, wages, benefits, hours of employment and all other conditions of employment in the bargaining unit(s), for which the Union is currently certified by the National Labor Relations Board Case or may be recognized by the Employer in the future.
>
> **Section 2.** For purposes of this Agreement the term "officer" shall include and be limited to only those individuals for whom the Union has been certified by the NLRB or who are voluntarily recognized by the employer. The term officer shall not include categories of officers expressly excluded by the NLRB unit definition.
>
> […]
>
> **ARTICLE 31: DURATION**
>
> **Section 1.** This Agreement shall be in full force and effect on November 1, 2016, and shall remain in full force and effect until 11:59 p.m., October 31, 2019, and so on from year to year thereafter unless, not later than sixty (60) days prior to the end of the current term and duration, either of the Parties hereto given written notice to the other of an intent to terminate, modify, amend and/or review the Agreement at the end of its then current term and duration. If the parties fail to provide timely notice to amend, terminate, or otherwise re-negotiate a new collective bargaining agreement, then this Agreement shall automatically renew for successive one-year periods.

[4] The Board certification describes the unit as all full-time and regular part-time security guards, whereas the parties stipulated in this proceeding that the appropriate unit is all full-time and part-time armed and unarmed security officers. No party to this matter disputes that the petitioned-for bargaining unit herein is the same unit involved in the Board's certification in Case 05-RC-168988.

> **Section 2.** This Agreement shall take effect upon its execution by both parties, and supersedes any and all prior agreements or understandings between the parties.
>
> **Section 3.** Execution by the Union shall mean the "AGREEMENT" was ratified by the International Union (LEOS-PBA) Executive Board, or if so directed by the International Union, ratified by the bargaining unit.
>
> **Section 4.** The Union shall provide the Employer written notice of ratification and the Employer shall confirm by written notice of its acceptance.

On May 14, 2019, the Employer and the Intervenor executed an amendment to the Agreement. The preamble to the amendment states that the sole purpose of the amendment is "to amend the [Agreement] between the parties concerning DHS-NPPD with a term running until October 31, 2019…" In it, two wage and benefit amendments were made. There is no evidence nor contention by any party that the amendment revised the effective dates of the Agreement, or constituted a termination of the Agreement such that the contract terminated as of October 31, 2019.

Finally, there is no evidence in the record that either party sought to terminate, modify, amend and/or review the Agreement as described by Article 31 in either 2019, or in 2020 after the contract renewed for a one year period beginning on November 1, 2019. Nor is there any evidence in the record that the Agreement is not being honored by either signatory party.

II. POSITIONS OF THE PARTIES

Petitioner challenges the content of the Agreement in arguing that this petition is not barred. First, Petitioner notes that in Article 31, Section 1, the effective date of the Agreement is November 1, 2016, whereas in Section 2 of that same Article, the effective date of the Agreement is defined as the date of execution by the parties. Moreover, Petitioner points out that in the wage schedule listed in Appendix A, there appears to be a wage rate for the period prior to November 1, 2016, with an increase post-November 1, 2016. Petitioner highlights the above information to argue that a member of the bargaining unit or a third party cannot discern the effective date by reading the Agreement, thereby prohibiting the Agreement from operating as a contract bar.

Furthermore, Petitioner questions whether the Agreement was ever effective. Section 4 of Article 31 requires that the Union shall provide the Employer written notice of ratification and the Employer shall confirm by written notice of its acceptance. Petitioner argues that there is no record evidence to show whether the Employer ever provided the requisite acceptance of the ratification notice submitted by the Union, thus arguing that the record does not substantiate that the Agreement has ever been effective. In Petitioner's view, the record fails to establish that the

Agreement has ever been effective, and because of the perceived discrepancies regarding the effective dates, Petitioner contends that the Agreement does not bar this petition.

In contrast, the Intervenor argues that the Agreement does bar the petition. To begin with, the Intervenor asserts that the Agreement was ratified per contractual language, such was communicated to the Employer, and the Agreement was executed by both the Employer and the Intervenor. Further, neither the Employer nor the Intervenor gave the notice of intent to terminate, modify, amend and/or review the Agreement in 2019 or 2020, thus the automatic renewal provision was triggered in each year. As such, Petitioner argues that the window period for a petition to be filed was 90 to 60 days prior to the renewal date, or August 3 to September 1, 2020. Because the Agreement, and the renewal provision are lawful and in-force, and because this petition was not filed until September 29, 2020, the Intervenor argues that this petition was untimely, and must be dismissed.

III. APPLICABLE BOARD LAW

The Board's well-settled contract bar doctrine attempts to balance often competing aims of employee free choice and industrial stability. See, e.g. *Seton Medical Center*, 317 NLRB 87, 88 (1995). When a petition is filed for a representation election among a group of employees who are alleged to be covered by a collective-bargaining agreement, the Board must decide whether the agreement meets certain requirements such that it operates to serve as a contractual bar to the further processing of that petition. See *Hexton Furniture Co.*, 111 NLRB 342 (1955). In order to act as a bar, a collective-bargaining agreement must contain substantial terms and conditions of employment to which parties can look for guidance in resolving day-to-day problems. *Appalachian Shale Products Co.,* 121 NLRB 1160 (198). The burden of proving that a contract is a bar is on the party asserting the doctrine and urging dismissal of the petition. *Roosevelt Memorial Park, Inc.*, 187 NLRB 517 (1970).

When, as a condition precedent, a written agreement between an employer and union is made subject to ratification by a union's membership, then the agreement does not serve to bar petitions unless the agreement is ratified before a representation petition is filed. *Appalachian Shale Products Co.,* 121 NLRB 1160, 1162-1163 (1958); *American Broadcasting Co.,* 114 NLRB 7, 7-8 (1956); *Westinghouse Electric Corporation, Small Motor Division,* 111 NLRB 497, 498-500 (1955); cf. *Aramark Sports & Entertainment Services,* 327 NLRB 47 (1998). Parol evidence on this issue is not relevant. *Gate City Optical Co.,* 175 NLRB 1059, 1061 (1969). In such circumstances, a report to the employer that the contract has been ratified is normally sufficient to bar a petition. *Swift & Co.,* 213 NLRB 49 (1974).

Further, the Board has often encountered collective-bargaining agreements with automatic renewal provisions. "Automatic renewal provisions have been widely used in collective-bargaining agreements since the inception of the Act, and the Board has long held that an automatically renewed agreement bars an election petition filed during the renewal period." *ALJUD Licensed Home Care Services*, 345 NLRB 1089 (2005) (internal citations omitted).

Moreover, "[t]he Board explicitly recognized the bar quality of automatically renewed agreements when it determined the Board's contract bar 'rules' in *Deluxe Metal Furniture*, 121 NLRB 995 (1958)." *ALJUD Licensed Home Care Services*, 345 NLRB at 1089. Furthermore, "[i]n subsequent cases, the Board has barred election petitions filed during the term of the automatic renewal. In each of those cases, the agreement automatically renewed, and the Board imposed no requirement . . . that the parties' renewal take the form of a newly executed document." *Id*.

IV. ANALYSIS

As extent Board law requires, I must examine the terms of the Agreement "as they appear within the four corners of the instrument itself" in assessing whether it retains its status as a bar to the instant petition. *Jet-Pak Corporation*, 231 NLRB 552, 553 (1977). There is no contention that the Agreement, outside of the challenges raised above, is defective or does not conform to the Board's requirements that define a lawful contract (i.e. that the Agreement does not contain substantial terms and conditions of employment, etc.). Thus, in examining the Agreement, the issues raised by Petitioner for me to decide are whether the Agreement's effective dates are defective such that the Agreement cannot operate as a bar to this petition, or whether the Agreement was properly ratified, and accepted, as required by Section 4 of Article 31. After careful review of the Agreement and the record, I find that the Agreement operates as a bar to the processing of this petition.

Petitioner first questions the validity of the Agreement, such that the Agreement cannot serve as a bar to the processing of this petition because the record does not establish that it ever validly took effect. Specifically, Petitioner contends that Section 4 of Article 31 requires the Intervenor to provide the Employer written notice of ratification, and the Employer shall confirm by written notice of its acceptance. Further, Section 3 of that same Article states that execution of the Agreement by the Union is indicative of ratification by the International Union or the bargaining unit. Petitioner argues that the record is devoid of any evidence that the Employer ever provided written acceptance of ratification as required by Article 31, Section 4, and evidence of the ratification submitted by the Intervenor at hearing is barred by the parol evidence rule. For the reasons that follow, I do not agree with Petitioner.

Section 3 of Article 31 states that execution of the Agreement by the Union means that the Agreement was ratified by the International Union or the bargaining unit if directed by the International Union. The Agreement was executed by the Union on October 18, 2016. Therefore, a clear reading of the face of the Agreement shows the ratification provision, and notice of the same, was satisfied. Next, the first part of Article 31, Section 4 requires that the Union provide the Employer with written notice of ratification. The record establishes that the Union provided the requisite notice on October 17, 2016.[5]

[5] Petitioner categorizes as parol evidence the ratification notice that was provided by the Intervenor. That is incorrect. Parol evidence, in its most basic form, is evidence offered to alter or vary any written instrument, or to shed light on the parties' intent of an agreement. The Intervenor's evidence that it submitted the contractually

Finally, the second part of Article 31, Section 4 requires the Employer to "confirm by written notice of its acceptance" of the Union's notice of contract ratification. The Agreement does not explicitly detail what form the Employer's written notice of acceptance must take. For that reason, I find that the Employer's execution of the Agreement—one day after the Union submitted its ratification notice to the Employer—to sufficiently meet the contractual requirement that the Employer provide "written" notice of its acceptance. If the Employer had any reservation as to the Union's ratification of the Agreement, or in any way did not accept the notice of ratification provided by the Union, logic dictates that it would not have executed the Agreement. However, one day after the Union provided written notice of ratification, the Employer executed the Agreement in writing. Accordingly, based on the above, I find that all conditions precedent to the finalization of the Agreement were satisfied, and the Agreement is a valid and effective contract for purposes of evaluating the Intervenor's contract bar argument.

Petitioner's next challenge to the Agreement concerns the effective dates. In Section 1 of Article 31, the Agreement clearly states that the Agreement "shall be in full force and effect on" November 1, 2016, and shall remain in full force and effect until 11:59 p.m., October 31, 2019. Section 2 of Article 31 seemingly ties the effective date of the Agreement to the date the parties execute the same, which occurred on October 18, 2016. Thus, as argued by Petitioner, the highlighted distinction sows confusion such that a bargaining unit member or third party cannot discern the effective dates by reading the Agreement itself. I am not persuaded by Petitioner's argument.

Initially, a plain reading of Section 1 and Section 2 of Article 31 does not find them to be at odds. Section 2 states that the Agreement takes effect upon execution, in this case October 18, 2016. Section 1 simply says that the Agreement shall be in full force and effect on November 1, 2016, which, if the Agreement took effect upon execution, is compatible.

Notwithstanding the above, in finding that collective-bargaining agreements with internally inconsistent effective dates do not bar representation petitions, the Board has consistently stated its concern that such agreements make it difficult for third parties and unit members to discern when a representation petition can be filed. "The terms of the agreement must be clear from its face so that employees and outside unions may look to it to determine the appropriate time to file a representation petition." *South Mountain Healthcare and Rehabilitation Center*, 344 NLRB 375 (2005).[6] I do not find there to be any confusion regarding

required ratification notice is not offered to alter or vary the instrument, it is offered to prove that it complied with the contractual requirements. Therefore, I reject Petitioner's attempt to prevent me from considering the ratification notice submitted by the Intervenor.

[6] See also *Cabrillo Lanes*, 202 NLRB 921, 923 (1973) (where conflicting contracts were presented to the Board as controlling, one with an automatic renewal provision and one without, both bearing employer and union signatures, the Board found that there was no bar to the petition because "[s]uch a difference in this [termination provision] is crucial, however, since by it the [e]mployer and [u]nion have created a situation which precludes a clear determination by a potential petitioner of the proper time for filing a new petition."); *Cooper Tire & Rubber Co.*, 181 NLRB 509 (1970) ("We agree that in order for a contract to constitute a bar, it must be sufficient on its face,

the effective dates of the Agreement, and the automatic renewals that occurred in 2019 and 2020. The Agreement very clearly states that it is effective upon execution and on November 1, 2016 through October 31, 2019. In Appendix A, wage and health & welfare rates are set for yearly periods, from November 1 through October 31 the following year. There are no conflicting dates surrounding when the Agreement would terminate—October 31, 2019—or automatically renew.

That Section 2 of Article 31 suggests the Agreement would become effective the date it was executed by the parties, which occurred 13 days prior to the dates listed in Section 1, is immaterial. I do not find that the 13-day difference caused any confusion as to when a petition could have been filed. Moreover, of particular importance is that the record establishes that the Agreement automatically renewed in 2019 after neither party indicated a desire to terminate, modify, amend and/or review the Agreement. At that moment, it is clear from the face of the Agreement that it renewed for one year, and the effective dates of that renewal were November 1, 2019 through October 31, 2020. The 13-day difference between the execution of the original Agreement and the dates listed in Section 1 of Article 31 does not change the clearly defined renewal period.

Consequently, because I find the Agreement to be a valid contract with an automatic renewal clause that triggered because neither party sought to terminate, modify, or alter the Agreement (so that the Agreement automatically renewed through October 31, 2020), it was incumbent on Petitioner to file this petition within the 60 to 90 day period before the Agreement renewed. That window period was open from August 2 through September 1, 2020. This petition was not filed until September 29, 2020, and as a result, it is untimely.

V. CONCLUSION AND ORDER

Based on the record evidence, as discussed in detail above, I conclude that the Intervenor has met its burden in establishing that the Agreement operates as a bar to processing this petition. Thus, I conclude that: (1) the Employer and the Intervenor were parties to a lawful and valid collective-bargaining agreement effective from November 1, 2016 through October 31, 2019; (2) the Agreement automatically renewed for successive one-year periods in 2019 and 2020; (3) the Agreement is currently in force and effective from November 1, 2020 through October 31, 2021; and (4) because this petition was not filed during the 60 to 90 day window period preceding the latest renewal, the Agreement operates as a bar to processing this petition. Accordingly, it is hereby ordered that the petition in this matter is dismissed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations you may obtain a request for review of this Decision by filing a request with Executive Secretary of the National

without having to resort to parol evidence and that the term of the agreement, as stated in the agreement, should be such that employees and outside unions may determine the appropriate time for filing representation petitions.")

Labor Relations Board. The request for review must conform to the requirements of Section 102.67 (d) and (e) of the Board's Rules and Regulations and must be filed by **December 3, 2020**.

Pursuant to Section 102.5(c) of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site (www.nlrb.gov), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden.[7] A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Issued at Baltimore, Maryland this 12th day of November, 2020.

(SEAL)

/s/ Sean R. Marshall

Sean R. Marshall, Regional Director
National Labor Relations Board, Region 05
Bank of America Center, Tower II
100 S. Charles Street, Ste. 600
Baltimore, MD 21201

[7] On October 21, 2019, the General Counsel (GC) issued Memorandum GC 20-01, informing the public that Section 102.5(c) of the Board's Rules and Regulations mandates the use of the E-filing system for the submission of documents by parties in connection with the unfair labor practice or representation cases processed in Regional offices. The E-Filing requirement went into immediate effect on October 21, 2019, and the 90-day grace period that was put into place expired on January 21, 2020. Parties who do not have necessary access to the Agency's E-Filing system may provide a statement explaining the circumstances, or why requiring them to E-File would impose an undue burden.